



Paper No. 6

PETER A. LIPOVSKY
SPAWARSYSCEN, SAN DIEGO
53510 SILVERGATE AVE., RM 103B
SAN DIEGO, CA 92152-5765

COPY MAILED**AUG 18 2003**

In re Application of
Adams et al.
Application No. 09/295,958
Filed: April 21, 1999
Attorney Docket No. 79628

OFFICE OF PETITIONS
ON PETITION

This decision concerns the June 25, 2003 petition under 37 CFR 1.137(b) which alleges non-receipt of a certain USPTO correspondence, and is being properly treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment in the above-referenced application.

The petition is **GRANTED**.

On April 21, 1999, the application was filed. On May 13, 1999, the Office of Initial Patent Examination (OIPE) mailed a "Notice to File Missing Parts of Application" ("5/13/99 Notice"), stating that the declaration filed on April 21, 1999 was not signed by an inventor named in the application, and setting forth an extendable 2-month reply period. No response was filed on or before December 13, 1999 and no extension of time under 37 CFR 1.136(a) was obtained. The application was held abandoned on July 14, 1999.

The petition asserts non-receipt of the 5/13/99 Notice, implying that the application should not have been held abandoned.

A grantable petition to withdraw the holding of abandonment, alleging non-receipt of an Office action which is the cause of the abandonment, must overcome a strong presumption that the Office action at issue, duly addressed and indicated as mailed, was timely delivered to the addressee.¹ The showing required to overcome this presumption consists of:²

- (1) a statement from the practitioner:
 - (A) stating that the Office action was not received by the practitioner;
 - (B) attesting, by referencing the docket record in (2) below, that a search of the relevant file jacket and docket records indicates that the Office action was not received; and
- (2) a copy of the docket record where the allegedly non-received Office action would have been docketed had it been received.

¹ 1156 OG 53 (Oct. 25, 1993). The 5/13/99 Notice was mailed to counsel's current address.

² *Id.*

The petition meets the above requirements and is thus granted.

The holding of abandonment in this application is hereby withdrawn, and the April 18, 2000 Notice of Abandonment vacated.

No petition fee is owed.

Finally, the instant petition encloses an executed declaration and authorizes the USPTO to charge the \$130 surcharge for late filing of an acceptable declaration to Deposit Account No. 50-0847. The application is now complete.

The application file is being returned to OIPE for further processing, including mailing a filing receipt. Upon completion of pre-examination, the application file will be forwarded to the appropriate Technology Center for examination in due course.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.



RC Tang
Petitions Attorney
Office of Petitions